Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NJD:NEW:TL-N-7822-98
AAmmirato

date: MAY 10 1999
to: Chief, Examination Division, New Jersey District
from: District Counsel, New Jersey District, Newark

subject: [redacted] - Franchise Fee
U.I.L. # 901.01-04; 197.00-00; 263.10-01

As indicated in our previous memorandum dated March 3, 1999, concerning the proper tax treatment of the franchise fee imposed on [redacted], our advice was subject to National Office post review. This addendum incorporates the changes to our analysis after consulting with the National Office.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

1) Foreign Tax Credit Issue. Our conclusion that [redacted] is not entitled to a foreign tax credit for the payment of the franchise fee remains unchanged. However, under the "predominant character" part of the analysis, our position regarding the "realization test" has changed. It does not appear that the franchise fee satisfies the realization test. The levy is calculated prior to the taxable period and is payable in installments during the period. Furthermore, the levy is not adjusted for the actual profit earned during the period. As such, the levy does not

satisfy the realization requirements under the regulations. Please note that this change further supports our conclusion that the payment of the franchise fee does not qualify for a foreign tax credit.

2) 263 Issue. Our conclusion that the franchise fee is subject to capitalization under section 263 remains unchanged. However, please note that the useful life of the fee would cease at the end of the "franchise period". The creation of a customer base/loyalty is not sufficient to establish a "substantial benefit" beyond the "franchise period".

3) 197 issue. Our conclusion that the franchise fee is subject to amortization under section 197 remains unchanged.

If you have any questions please contact attorney Anthony Ammirato at (973)645-2539.

MATTHEW MAGNONE
District Counsel

By: /s/ WFH
WILLIAM F. HALLEY
Assistant District Counsel

Noted: /s/ MM
MATTHEW MAGNONE
District Counsel

cc: Edward Parker, Revenue Agent
cc: ARC-TL(NER)

Office of Chief Counsel
Internal Revenue Service

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subject: [redacted] - Franchise Fee
U.I.L. # 901.01-04; 197.00-00; 263.10-01

This responds to your request for advice on the proper tax treatment by [redacted] on the payment of a "franchise fee" imposed by the [redacted] on [redacted], an [redacted] partnership of which [redacted] owns [redacted]%.

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This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

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Issue 1: Whether [redacted] is entitled to a foreign tax credit for [redacted]% of the franchise fee paid by [redacted]?
Conclusion: No.

Issue 2: Whether the franchise fee is subject to amortization under I.R.C. section 197?
Conclusion: Yes.

Issue 3: Whether [redacted] is required to

capitalize, under section 263, [redacted] percent of the franchise fee paid by [redacted]? (Alternative to the 197 argument)
Conclusion: Yes.

Facts:

(The facts were obtained from [redacted].[1])

In [redacted], the [redacted] ("the government"), announced that it would deregulate the [redacted] which had been operated as a monopoly and protected by regulatory and institutional barriers. [redacted]. In [redacted], the government established a framework to gradually move the [redacted] from a monopoly to a fully competitive industry, which will be achieved by [redacted]. Id. at 5. The assets and activities of the [redacted] were divided into [redacted] regionally based distribution companies ("DBs") and transferred to private interests. Id. at 34. There was no fee charged for the DBs. Id. at 19. On [redacted], licenses were granted by the government to the private interests authorizing the distribution and sale of [redacted] within a geographical area covered by the particular DB. Three of the DBs serve metropolitan [redacted] and two serve rural [redacted]. Id. at 11. The three companies serving the urban area are [redacted], [redacted] and [redacted] Id. Two of the companies have [redacted] ownership: [redacted] is a [redacted]% partner in [redacted], and [redacted] owns [redacted]% of [redacted].

Purchasers of [redacted] from DBs are comprised of two groups, franchise customers and non-franchise customers. Id. at 12. Franchise customers are those who purchase an amount of [redacted] that does not exceed specific limits prescribed in government regulations. Id. Non-franchise customers are those who

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[1]An [redacted] Federal Court case involving [redacted], an [redacted] distribution company. [redacted] was issued a Private Ruling, dated [redacted] from the Commissioner of Taxation for the [redacted]. The ruling held that the franchise fees paid to the [redacted] were not deductible and were of a capital nature. [redacted] appealed the Private Ruling to the Commissioner of Taxation. The Commissioner disallowed the objection. [redacted] appealed the Commissioner's decision to the Federal Court of [redacted]. The Federal Court held that the Commissioner did not err in ruling that the franchise fees are not deductible.

purchase an amount of [redacted] that exceeds the prescribed limits. During the [redacted] period ([redacted] through [redacted]), franchise customers must obtain their [redacted] from the DB which services their area. Id. The prescribed [redacted] limits will gradually decrease during the deregulation period and customers who are designated as "franchise customers" will become "non-franchise customers". Id. Beginning in [redacted], all customers will be non-franchise customers and will able to choose their [redacted] supplier without geographical restraint. Id.

In order to achieve a fully competitive [redacted], the government believed that it was essential that all the DBs operated on a "level playing field" during the deregulation period. Id. at 6. The government was supplied with a report from industry experts which indicated that the rural DBs have a higher fixed cost structure than the urban DBs, which results in a lower rate of return for the rural DBs. Id. at 6. The government recognized that the disparity in the rates of return between the DBs serving the urban areas and those serving the rural areas would inhibit its goal of achieving a fully competitive ECI. Id. at 7. It was believed that the DBs enjoying high regulated profit margins could use those margins to win a market share of contestable customers (non-franchise customers) from those DBs not enjoying such regulated margins. Id. To remedy the problem, the government decided to impose "franchise fees" on all the DBs to ensure that they would not earn a retail margin any greater that would be expected if all customers had been contestable from the outset. Id. The franchise fees apply only to sales to franchise customers and are imposed until [redacted], when all franchise customers will have been converted to non-franchise customers and full deregulation would have been achieved.

The franchise fees are prospective and are assessed with reference to an estimate of the likely income. The franchise fees are calculated as follows: Income from sale of [redacted] to franchise customers, minus: 1) the cost of deriving such income; 2) the taxes payable in deriving that income and 3) an amount determined by the treasurer to be a reasonable return on the capital of the company used in deriving that income. Id. at 11-13. Once assessed, the fees are payable irrespective of the amount of profit actually earned and there is no provision for the fees to be varied. Id. at 13. The franchise fees for the year ended [redacted] were payable by four equal installments on [redacted], [redacted] and [redacted]. The franchise fees are designed to capture the monopoly rent that would otherwise be available to the DBs who have a monopoly over their franchise customers. Id. at 8. They constitute a payment for freedom from competition within the DB's specific geographic location until the year [redacted]. Id. at 19.

Issue 1: Whether [redacted] is entitled to foreign tax credit for [redacted]% of the franchise fee paid by [redacted].

Rule:

To qualify for a foreign tax credit, a levy paid: 1)must be a "tax"; 2) be paid or accrued to a foreign country or U.S. possession; and 3) the tax must be an income, war profits or excess profits tax (or must be paid in lieu of such a tax). Treas. Reg. 1.901-2(a). The determination of whether a levy qualifies for a foreign tax credit is made under U.S. income tax principles. Treas. Reg. 1.901-2(a)(2)(i); Keasby & Mattison Company v. Commissioner, 133 F.2d 894 (3rd Cir. 1943).

1. The levy must be a "tax".

A foreign levy is a tax if it is imposed pursuant to the authority of a foreign country to levy taxes. Treas. Reg. 1.901-2(a)(2)(i). The levy must be imposed by the government in its role as revenue raiser and not in its role as government regulator. Under U.S. income tax principles, a levy is not a "tax" if paid to the government in compensation for some privilege or franchise right. See Rev. Rul. 71-49, 1971-1 C.B. 103; Rev. Rul. 61-152, 1961 C.B. 42; Rev. Rul. 77-29, 1977-1 C.B. 44. Levies imposed on subjects other than income, e.g., franchises, privileges, etc, are not income taxes, although measured on the basis of income. Keasby & Mattison Company.

The Treasury Regulations specify that a payment to a foreign country is not a tax to the extent that the payor receives, or will receive, a "specific economic benefit" in exchange for the payment. Treas. Reg. 1.901-2(a)(2)(i). "Specific economic benefit" means an economic benefit that is not made available on substantially the same terms to substantially all persons who are subject to the income tax that is generally imposed. Treas. Reg. 1.901-2(a)(2)(ii)(B). "Economic benefit includes property; a service; a fee or other payment; a right to use, acquire, or extract resources, patents or other property that a foreign country owns or controls...". Treas. Reg. 1.901-2(a)(2)(ii)(B). "Economic benefit" does not include the right to engage in business generally or in a particular form. This provision is consistent with rulings and case law under I.R.C. Section 164 which hold that fees paid for incorporation under state law, fees for filing certificates to increase the capital stock of a corporation and fees paid for the privilege to do business in a

particular state are all deductible as taxes paid. Rev. Rul. 72-47, 1972-1 C.B. 51; Rev. Rul. 66-184, 1966-2 C.B.; Wayne Coal Mining Co. v. Commissioner, 209 F.2d 152 (3rd Cir. 1954).

A person that is subject to a levy by a foreign country, U.S. possession, or a political subdivision and receives, or will receive, directly or indirectly, a specific economic benefit from the country or possession is defined as a "dual capacity taxpayer". Treas. Reg. 1.901-2(a)(2)(ii)(A). If the application of a foreign levy is different for "dual capacity taxpayers" from its application to other persons, either because of the levy's terms or in practice, the levy as applicable to the dual capacity taxpayers is a separate levy from that imposed on other persons and must be analyzed separately to determine whether it is an income tax. Treas. Reg. 1.901-2A(a)(1). In such a case, the dual capacity taxpayer has the burden of establishing the amount of the levy that is a "tax". Treas. Reg. 1.901-2A(b)(1), 1.901-2A(c)(1). Only one of two methods may be used to establish the portion of a levy which is a "tax": 1) the "facts and circumstances" method and 2) the "safe harbor" method. Treas. Reg. 1.901-2A(b)(1); -2A(c)(1). If a dual capacity taxpayer establishes that a portion of a foreign levy is a "tax", the regulations treat the balance as paid in exchange for the specific economic benefit. Treas. Reg. 1.901-2A(b)(1). Under the facts and circumstances method, a taxpayer must establish the amount of a foreign levy that is not paid in exchange for a specific economic benefit based on "all the relevant facts and circumstances". Treas. Reg. 1.901-2A(c)(2)(i). A taxpayer must make an election to utilize the "safe harbor method" to establish the portion of a levy which is a tax. Treas. Reg. 1.901-2A(d)(1). The purpose of the method is to provide a foreign tax credit for an amount approximating the amount of the generally imposed income tax that would have been paid if the taxpayer had not been a dual capacity taxpayer and if the amount considered to be paid for the specific economic benefit had been deductible for foreign income tax purposes. Treas. Reg. 1.901-2A(e)(1). The safe harbor formula is provided in Treas. Reg. 1.901-2A(e)(1).

Analysis

The stated purpose of the franchise fee is to ensure a "level playing field" of all the DBs during the "franchise period". [redacted] The government imposed the fee to curtail the competitive advantage obtained by the urban DBs due to higher profit margins during the franchise period. Id. The franchise fees are imposed as part of the scheme for the restructuring of the [redacted] supply industry and are considered to be an integral aspect of the phasing in of full competition between the [redacted] distribution companies. Id. at 34.

The fees are the only payment by the private interests for the DBs and the monopoly power in a particular region. Id. at 19. Considering the purpose of the franchise fee, it is apparent that the fee is imposed pursuant to the government's power to regulate the [redacted] and not pursuant to its power to levy taxes. Therefore, it does not constitute a "tax" under Treas. Reg. 1.901-2(a)(2)(i).

In return for the franchise fee, [redacted] and the other DBs, are granted the exclusive right to supply [redacted] to the franchise customers within a specific geographic region. The [redacted] supply industry has historically been controlled by the government; therefore the receipt of the exclusive right to supply [redacted] constitutes an "economic benefit" received from the government under Treas. Reg. 1.901-2(a)(2)(ii)(B). The right to be the exclusive supplier of [redacted] to franchise customers within the urban area is not an economic benefit which is made available to other persons who are subject to the generally imposed income tax; therefore, the right constitutes a "specific economic benefit" under Treas. Reg. 1.901-2(a)(2)(ii)(B). Since the DBs receive a specific economic benefit in return for the franchise fee, they are "dual capacity taxpayers" under Treas. Reg. 1.901-2(a)(2)(ii)(A). Since the franchise fee is imposed only on the DBs, it is apparent that its "application for dual capacity taxpayers is different from its application to other persons". As such, the DBs, under Treas. Reg. 1.901-2A(b)(1), have the burden of establishing what portion, if any, of the franchise fee is not paid in exchange for the specific economic benefit.

Based upon the above analysis, it appears that [redacted] would not be entitled to a foreign tax credit for [redacted]% of the franchise fee paid by [redacted] Although the issue of whether the franchise fee is a creditable tax appears to be disposed of under the first prong of the test, we will continue to analyze the franchise fee under the other parts of the test.

2. The tax must be paid to a foreign country.

Under our facts, this requirement is not at issue since it is apparent that the "franchise fee" is paid to a foreign country.

3. The tax must have the "predominant character of an income tax in the U.S. sense". Treas. Reg. 1.901-2(a)(1)(ii).

Rule/Analysis:

Under the regulations, a tax has the "predominant character

of an income tax in the U.S. sense" if: A) The tax is "likely to reach net gain"; Treas. Reg. 1.901-2(a)(3)(i); Bank of America National Trust and Savings Association v. United States, 459 F.2d 513 (Claim Ct. 1972); and B) the tax does not depend on the availability of a credit for the tax against income tax liability to another country (must not be a "soak-up" tax). Treas. Reg. 1.901-2(a)(3)(ii).

A) The tax must be likely to reach net gain.

In Bank of America National Trust and Savings Association, it was held that a foreign levy qualifies as a creditable tax if the foreign country is attempting to reach net gain through the levy. Id. In adopting the principle established in Bank of America National Trust and Savings Association, the regulations provide that a tax is "likely to reach net gain" in the normal circumstances in which it applies if, and only if, the tax, judged on the basis of its predominant character, meets each of the following tests (Treas. Reg. 1.901 -2(b)(1)):

i. Realization Test. In general, a tax satisfies the realization requirement if it is imposed upon or subsequent to the occurrence of events that would result in the realization of income under the Internal Revenue Code. Treas. Reg. 1.901-2(b)(2)(i)(A). However, the regulations also provide that certain taxes imposed prior to a "realization event" may satisfy the test. For example, a tax imposed on the occurrence of an event before realization intended to recapture a tax benefit, such as a deduction or credit previously claimed by the taxpayer, satisfies the requirement. Treas. Reg. 1.901-2(b)(2)(i)(B).

In our facts, the event which gives rise to realization of income under the I.R.C. is the actual sale of the [redacted] to the customers. (" The all events test" for an accrual method taxpayer). (b)(7)c, (b)(7)a [redacted]

ii. Gross Receipts Test. A tax meets the gross receipts requirement if, based on its predominant character, it is imposed either on actual gross receipts or on formulary gross receipts computed under a method that is likely to produce an amount that is not greater that the actual gross receipts. Treas. Reg. 1.901-2(b)(3). The regulations provide examples of permissible methods

in predetermining gross receipts. See, Treas. Reg. 1.901-2(b)(3), Ex. 1 and 2.

In our facts, the franchise fees are assessed with reference to an estimate of the likely income of the particular DB. It is not clear what method is utilized in arriving at the prospective sales figure; therefore we are unable to determine if the gross receipts test is satisfied.

iii. Net Income Test. The regulations provide that the foreign tax must permit the recovery of significant costs and expenses attributable, under reasonable principles, to gross receipts included in the foreign tax base. Treas. Reg. 1.901-2(b)(4)(i)(A). The regulations provide specific guidelines in determining whether the structure of the foreign tax permits the recovery of "significant costs and expenses". See Treas. Reg. 1.901-2(b)(4). In regards to formulary taxes, deductions may be computed under a formulary method if that method is likely to produce deductions that approximate the actual amount of deductions. Treas. Reg. 1.901-2(b)(4)(i).

In our facts, the franchise fee is calculated as follows: income from the sale of [redacted] to franchise customer, minus: 1) the costs of deriving the applicant's income from the sale of [redacted] to the franchise customers, 2)taxes payable in deriving the income and 3) an amount determined to be a reasonable return on the capital of the company used in deriving the income. We do not have the particular facts indicating exactly what costs are deductible; therefore, it is not possible to determine if the structure of the franchise fee allows the recovery of "significant costs and expenses". Additionally, since the franchise fee is prospective, it appears that the costs are calculated pursuant to a formulary method. We do not have any facts concerning what formula is utilized in estimating the costs; therefore we can not determine if the method would comply with Treas. Reg. 1.901-2(b)(4)(i) .

B. The tax must not be a "soak-up" tax.

Liability for the franchise fees is not contingent on whether they qualify for a foreign tax credit in another country; therefore it is not a "soak-up tax".

Although the franchise fees are based on projected sales revenue and projected expenses, the fee is prospective and is not adjustable even if the actual gross receipts is less than the projections. Assuming that all the requirements for a foreign tax credit are satisfied, this aspect of the franchise fee would not prevent it from qualifying for a foreign tax credit. It is only

required that the foreign tax is structured to reach net gain. In determining whether this requirement is satisfied, "the only question is whether it is very unlikely or highly improbable that taxpayers subject to the impost will make no profit or will suffer a loss". Bank of America National Trust and Savings Association at 524; Rev. Rul. 78-62, 1978-1 C.B. 226. In our facts, it is true that the franchise fee is fixed and would apply even if [redacted] suffers a loss. However, since [redacted] has a monopoly over the franchise customers within its particular region, it is very unlikely such would occur.

Issue 2: Whether the franchise fee is subject to amortization under I.R.C. section 197.

Rule/Analysis:

Certain intangible property, defined as amortizable "197 intangibles" acquired by a taxpayer and held in connection with the conduct of a trade or business qualifies for ratable amortization over a 15-year period, beginning with the month of acquisition. I.R.C. section 197(a),(c). Section 197 applies to an intangible acquired by a taxpayer regardless of whether it is acquired as part of a trade or business. I.R.C. section 197(c)(2). "Section 197 intangibles" includes any license, permit, or other right granted by a governmental unit or any agency (even if the right is granted for an indefinite period or the right is reasonably expected to be renewed for an indefinite period). I.R.C. section 197(d)(1)(D). Additionally, the term "section 197 intangible" includes any franchise, trademark, or trade name. I.R.C. section (d)(1)(F). The term "franchise" is defined, by reference to section 1253(b)(1). I.R.C. section 197(f)(4)(A). "Franchise" includes any agreement that provides one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area. I.R.C. section 1253(b)(1). It has been established that "franchise" under section 1253 is not limited to rights granted by private entities and includes franchises granted by governmental entities . See Tele-Communications, Inc. v. Commissioner, 95 T.C. 495 (1990) and Jefferson-Pilot Corp. v. Commissioner, 995 F.2d 530 (4th Cir. 1993). I.R.C. section 1253(d)(1) provides that a deduction under section 162(a) is allowed for amounts paid that: 1) are contingent on the productivity, use or disposition of a franchise and 2) are paid as part of a series of payments that are payable at least annually throughout the entire term of the transfer agreement. I.R.C. section 197(f)(4)(C) provides that any amount to which section 1253(d)(1) applies is not taken into account under section 197.

In our facts, the franchise fees are paid by [redacted] and the other DBs in return for the right to be the exclusive supplier of [redacted] to franchise customers within a specific geographic region. The franchise fees are in substance paid as a purchase price for a business which gives the particular DB monopoly power in a specific geographic region. [redacted]. As such, the rights granted by the government constitute a "franchise" under section 1253.

The next issue is whether the payment of the "franchise fee" is "contingent on the productivity, use or disposition of a franchise" pursuant to section 1253(d)(1). The issue depends on the meaning of "contingent on the productivity, use or disposition of a franchise" as contained in section 1253(d)(1). It is a well established principle that the plain language of a statute is the source of its interpretation. When the language is not ambiguous, it is conclusive, absent a clearly expressed legislative intent to the contrary. Watt v. Alaska, 451 U.S. 259, 65 (1981). In Webster's unabridged dictionary, among the numerous definitions provided, contingent is defined as "of possible occurrence, likely but not certain to happen, unpredictable in outcome or effect, dependent on or conditioned by something else". Webster's Third New International Dictionary, Unabridged 902 (3d ed. 1981). The franchise fee is based on projected sales to franchise customers and is not adjustable if the projections fall short or exceed the actual sales. The liability of the DB to pay the predetermined fee is certain; therefore the franchise fee is not "of possible occurrence or unpredictable in outcome or effect".

The legislative history of section 1253 provides that the Section was enacted to provide clarity as to whether the transfer of a franchise, trademark or trade name constitutes a sale or a license. S. Rept. 91-552 (1969), 1969-3 C.B. 423. Whether a transaction constitutes a sale or license determines the proper tax treatment to the transferor and the transferee of the intangible. If a given transaction constitutes a license, a transferee may be entitled to deduct payments made for the license under Section 162(a); however, if the transaction constitutes a sale, the transferee may be required to amortize the payments. If the transferor exercises continuing, active, operational control of a franchise, trademark or trade name, by retaining significant powers, rights or continuing interests, the Committee believed that such exercise of control is inconsistent with a sale or exchange of property. Id. The Committee considered the receipt of contingent payments as constituting a continuing economic interest in the subject matter as well as being analogous to the receipt of royalty or rental income. Id. Contingent payments include continuing payments measured by a

percentage of the selling price of products marketed or based on the units manufactured or sold. Id.

When payments are based on the actual productivity of a franchise, it is clear that the transferor has a continuing economic interest in the franchise, since the payments will not be made unless the franchise is economically viable. In such a case, the transfer would constitute a license. However, when payments, such as the franchise fees, are predetermined fees based on projected sales and the transferor is guaranteed receipt of the payments regardless of the actual economic vitality of the franchise, it seems apparent that the transferor no longer has an economic interest in the franchise. As such, the transferor no longer has a "continuing interest" in the franchise and the transfer would constitute a sale.

Based on the above, it is apparent that the franchise fees are not contingent on the productivity of the franchise and do not fall within section 1253(d)(1). As such, the franchise fees are subject to amortization under section 197.

Issue 3: Whether [redacted] is required to capitalize [redacted]% of the franchise fee paid by [redacted].

Rule/Analysis:
(If section 197 is not applied to the transaction, then this section 263 argument should be made.)

No deduction is allowed for an amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. I.R.C. section 263(a)(1). Such expenses must be capitalized into the basis of the property. An expense may fall within the capitalization requirement of section 263 even if it does not create or enhance a separate and distinct asset. Indopco, Inc. v. Commissioner, 112 SCt. 1039 (1992). Expenditures should be treated as "capital" in nature rather than "ordinary and necessary" if they secure benefits which have a life of more than one year. Medco Products Co., Inc. v. Commissioner, 523 F.2d 137 (10th Cir. 1975). In Medco Products Co., Inc., it was held that legal expenses incurred by a taxpayer in a trademark infringement lawsuit must be capitalized since they secured benefits from the trademarks which had a life over one year.

[redacted]
(b)(7)c, (b)(7)a
[redacted]

(b)(7)c, (b)(7)a [redacted]

Please note that this advice is subject to national office post review. If you have any questions please contact attorney Anthony Ammirato at (973)645-2539.

MATTHEW MAGNONE
District Counsel

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WILLIAM F. HALLEY
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Noted: /s/ MM
MATTHEW MAGNONE
District Counsel

cc: Edward Parker, Revenue Agent
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